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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

IN RE: COUNTRYWIDE FINANCIAL
CORP. MORTGAGE-BACKED
SECURITIES LITIGATION

Case No. 11-ML-02265-MRP (MANx)

THRIVENT FINANCIAL FOR
LUTHERANS, et. al.,

Case No. 11-CV-7154-MRP (MANx)

Plaintiffs,

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DAVID SAMBOL'S MOTION TO
DISMISS THE AMENDED
COMPLAINT**

v.

COUNTRYWIDE FINANCIAL
CORPORATION, et al.,

Defendants.

Date: May 17, 2012
Time: 11:00 a.m.
Courtroom: 12
Judge: Hon. Mariana R. Pfaelzer

1 Plaintiffs' Amended Complaint asserts the same two claims against
2 defendant David Sambol that the Court dismissed from the original Complaint:
3 aiding and abetting and negligent misrepresentation under Minnesota common law.
4 But the Amended Complaint contains no new allegations whatsoever in support of
5 these claims against Mr. Sambol. *See* David Sambol's Request for Judicial Notice
6 in Support of Motion to Dismiss the Amended Complaint ("RJN"), Ex. A (redline
7 submitted by plaintiffs comparing amended and original complaints). The claims
8 should therefore be dismissed with prejudice for the same reasons the Court
9 previously gave in its February 17, 2012 Order (the "Dismissal Order," *see* Dkt.
10 No. 170), and on the grounds set forth in Mr. Sambol's previous motion to dismiss.¹

11 I. COMMON LAW CLAIMS AGAINST MR. SAMBOL

12 In the Dismissal Order, the aiding and abetting and negligent
13 misrepresentation claims against Mr. Sambol were dismissed in their entirety with
14 leave to amend. The Court did so because the original Complaint failed to allege
15 all of the necessary elements of each claim. With respect to the aiding and abetting
16 claim, the original Complaint failed to allege sufficient facts showing that Mr.
17 Sambol provided "substantial assistance" to the purported fraud. Dismissal Order
18 at 11. And in the case of the negligent misrepresentation claim, the original
19 Complaint failed to allege facts showing that Mr. Sambol owed Plaintiffs a "duty of
20 care." *Id.* at 11-12. The Amended Complaint makes no attempt to—and does
21 not—remedy any of these defects. *See* RJN, Ex. A ¶¶288-308. Accordingly, the
22 aiding and abetting and negligent misrepresentation claims against Mr. Sambol
23 should now be dismissed with prejudice. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d
24 1258, 1261 (9th Cir. 1992) (affirming dismissal with prejudice where court had
25 instructed plaintiff regarding deficiencies in prior order dismissing claim with leave
26

27 ¹ Rather than repeat the grounds briefed in support of his motion to dismiss the
28 original Complaint, Mr. Sambol references and incorporates the opening and reply
memoranda (and supporting affidavits and pleadings) in support of his prior motion
to dismiss (Dkt. Nos. 24, 72, 73, 161 & 162).

1 to amend).²

2 II. LACK OF PERSONAL JURISDICTION OVER MR. SAMBOL

3 In addition, while Mr. Sambol recognizes that the Court has previously
4 declined to reach the question of whether Minnesota has personal jurisdiction over
5 him because the question is mooted by the dismissals on other grounds, he
6 respectfully again moves for dismissal in order to preserve the argument in the
7 event of an appeal. *See infra* n.1.

8 For these reasons, the Amended Complaint should be dismissed with
9 prejudice with respect to Mr. Sambol.

10 Dated: March 30, 2012

Respectfully submitted,

11 ORRICK, HERRINGTON & SUTCLIFFE LLP

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13 By: /s/ Michael C. Tu
14 Michael C. Tu

15 Attorneys for Defendant David Sambol

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26 ² As discussed in the Countrywide Defendants' Memorandum of Points and
27 Authorities in Support of Their Motion to Dismiss Plaintiffs' Amended Complaint
28 ("CW Br."), which Mr. Sambol has joined, the common law claims should be
dismissed for the additional reason that they are time-barred under the New York
borrowing statute as to those plaintiffs incorporated in Delaware and
Massachusetts. *See* CW Br. at 3-9.